

ATTACHMENT #1



90 Delaware Ave
Paterson, NJ 07503



October 28, 2004

**VIA FACSIMILE (215) 440-2604
AND REGULAR U.S. MAIL**

Karin D. Porter
Federal Investigator
U.S. Equal Employment Opportunity Commission
Philadelphia District Office
21 South 5th Street, Suite 400
Philadelphia, PA 19106-2515

Re: *Hill v. Super Fresh*
Charge Number 17C-2004-00192

Dear Ms. Porter:

This will acknowledge and respond to the above referenced charge of discrimination.

Enclosed please find Respondent's response to the Commission's Request For Information and Request For Position Statement.

If you would like to discuss any aspect of this case, please contact me at (973) 321-3880.

Sincerely,

SHERYL R. MARTIN
Senior Counsel, Vice President of Employment Law

REQUEST FOR INFORMATION AND REQUEST FOR POSITION STATEMENT

Hill v. Super Fresh
Charge Number 17C-2004-00192

PART I - GENERAL INFORMATION

1. Super Fresh Food Market (commonly referred to as store # 588), 401 New Castle Avenue, New Castle, DE 19720.
2. Retail grocery store.
3. There are approximately 69 employees at Super Fresh store #588.

PART II - POSITION STATEMENT

Complainant complains of events that occurred in or on 2002, April 2002, 7/26/02 and 7/31/02. These events occurred more than 300 days prior to December 23, 2003, the date Complainant filed his charge. Thus, with respect to these alleged events, the charge is clearly untimely.

On July 25, 2003, Complainant was assigned to work on the front end as a cashier. This assignment did not affect his hours, wage rate or benefits in any way. Complainant thereafter failed to report to work.

Thus Complainant cannot even state a claim of discrimination because he was not subject to an adverse employment action, which is one of the elements of a prima facie case. An adverse employment action is one that significantly alters the terms and conditions of the employee's job (such as hiring, granting leave, discharging, promoting and compensating). Subjective, personal disappointments do not meet the objective indicia of an adverse employment action. While Complainant may be unhappy with the assignment, his compensation and benefits were not affected. Thus Respondent's actions do not rise to the level of an adverse employment action, and Complainant does not and cannot state a prima facie case of discrimination.

➤ Based on the foregoing, Respondent submits that Complainant's charge must be dismissed. ←

PART III - RESPONSE TO THE CHARGE

1. To the best of Respondent's knowledge, no documents exist relating to Complainant's assignment to the front end on July 25, 2003. See the Termination Form attached as Exhibit A, documenting that Complainant quit without notice.

2. See policies attached as Exhibit B. There are no written policies or procedures regarding job assignments. Employees are assigned to job duties based on business needs.
3. Phil Johnston, store manager, made the decision to assign Complainant to the front end on July 25, 2003. His statement will be submitted under separate cover as soon as possible.
4. With respect to Complainant's assignment to the front end on July 25, 2003, there are no persons identified who allegedly received more favorable treatment than Complainant.
5. Not applicable.
6. Not applicable.
7. Not applicable.
8. Not applicable.
9. Not applicable.
10. To the best of Respondent's knowledge, Complainant has not raised the allegations contained in this charge with any other internal or external source or agency.
11. This matter has not been resolved. Respondent does not have a proposal for resolution at this time, but is willing to consider and respond to any reasonable proposal that the Complainant or Commission puts forth.

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EXHIBIT A

PS033

PRS TERMINATION FORM (see leave on back)

Division# 022
 5580 ☒ Store
☐ Warehouse
☐ Admin. Dept.

Social Security #

1.8.1.6.3.8.4.0.4.4

ID #

360

First Name

JAMES

Middle

C

Last Name

HILL

Change Date (Effective Date)

Month	Day	Year

(PRS Dept. Use)

Termination Date

Month	Day	Year
<u>0.8</u>	<u>0.6</u>	<u>2.0.0.3</u>

Reason Code

45

(see below)

Rehire Eligible

N

Y= Eligible for Rehire

N= Not Eligible for Rehire

Last Day Worked

Month	Day	Year
<u>0.7</u>	<u>2.6</u>	<u>2.0.0.3</u>

Assignment Status
(check applicable box)

☐

Term Assignment

☐

Term with Pay with Benefits

☐

Term with Pay without Benefits

☐

Term without Pay with Benefits

Last Standard Process Date

Month	Day	Year

(PRS Dept. Use)

Reason Codes

Layoff	Resignation	Retirement	Other Types of Separation
01 = Position Elimination	40 = Accept New Job	R = Retirement	61 = Medical - Not Job Related
02 = FT Layoff with Recall	42 = Marriage		62 = Medical - Job Related (WC)
04 = PT Layoff with Recall	43 = Dissatisfied with Pay	<u>Term for Cause</u>	70 = Military
06 = Store Closing/Reorganization	44 = Personal Reasons	20 = Not Qualified	D = Deceased
	45 = Quit without Notice	21 = Excessive Absence	
	46 = Relocation	22 = Unsatisfactory Performance	
	47 = Return to School	23 = Insubordination	
	48 = Dissatisfied with Working Conditions	24 = Violation of Company Policy	
	07 = LOA Expiration	25 = Invalid Associate ID presented	

Vacation Hours Due

\$

Personal Hours Due

RECEIVED

ENTER EXPLANATION AS NECESSARY:

CHANGED

SEP 02 2003

SEP 03 2003

P.R.S.

I have reviewed this document and have been given the opportunity to note my comments.

Associate Signature

Date

APPROVAL

APPROVAL

Phil Johnston
 Signature Date 8-28-03

P Burns
 Signature Date 8-28-03